?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 31.10.2018

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

+Crl.O.P.(MD)No.14005 of 2016
to 14007 of 2016
and
Crl.M.P(MD).Nos.6533, 6535 and 6534 of 2016

#Vimala @ vimala Ramani : Petitioner/Accused No.3
(in all Crl.O.Ps)

Vs.

$1.D.John Ponniah @ D.John :Respondent/Complainant
(in all Crl.O.Ps)

2.M/s.Vimal Shipping Agencies,
A World Trade Avenue,
Harbor Estate,
Tuticorin~4.

3.D.Baskaran

4.A.M.Rajesh : Respondent/Accused No.
1,2 and 4
(in all Crl.O.Ps)

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C., praying to call for the records pertaining to the proceedings in complaint in C.C.Nos.213, 24 and 25 of 2014 respectively on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tuticorin and quash the same as far as petitioner is concerned.

!For Petitioner : Mr.B.N.Raja Mohamed
^For R~1 : Mr.S.Sivailayaraja
For R~2 : Vimal Shipping Agencies
For R~3 : Mr.D.Baskaran
For R~4 : Mr.A.M.Rajesh

(in all Crl.O.Ps)

:COMMON ORDER

These petitions have been filed to quash the proceedings initiated under Section 138 Negotiable Instruments Act.

2.The petitioner has been arrayed as A~3 in all three complaints. The

first respondent has filed the a complaint under Section 138 of Negotiable Instruments Act against the partnership firm and three of the partners. Admittedly the second accused is the signatory in the cheque. The other two accused arrayed only on the ground that they are also partners in the accused firm.

3.The learned counsel for the petitioner submitted that in order to roping the petitioner as an accused in 138 complaint, no sufficient allegations have been made in the complaint. The learned counsel also brought to the notice of this Court the relevant allegations made in the complaint. In the entire complaint it is seen that this petitioner has been arrayed as an accused only based on the fact that she has also a partner in the partnership firm.
4.The Hon-ble Supreme Court in the judgment reported in 2010 3 SCC 300 has categorically held that in case of any Director or partner, the complaint should specifically state how and what manner the Director or partner was in charge of irresponsible for the conduct of the business of the company. A mere bald statement that an accused is a partner or director in a company and was responsible for the day today affairs is not sufficient.

5.The Hon-ble Supreme Court made it clear that this will not apply to a person who has signed the cheque. The Hon-ble Supreme Court further held that the vicarious liability must be pleaded and proved and it cannot be inferred.

6.The judgment of the Hon-ble Supreme Court is squarely applied to the facts of the case. The allegations made in the complaint does not satisfy the requirement under Section 141 of Negotiable Instruments Act.

7.In the result, the proceedings in C.C.Nos.213, 24 and 23 of 2014 respectively, on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tuticorin, insofar as this petitioner is concerned, is hereby quashed. Accordingly, these Criminal Original Petitions are allowed. The Court below is

directed to proceed further with the criminal complaint insofar as other accused persons are concerned and complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

To
The Judicial Magistrate,
Fast Track Court (Magisterial Level), Tuticorin.